

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

FutureGen Industrial Alliance, Inc.	:	
	:	
Application for a Certificate Authorizing the	:	13-0252
Construction and Operation of a Carbon	:	
Dioxide Pipeline.	:	

PROPOSED ORDER

DATED: January 3, 2014

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FutureGen Industrial Alliance, Inc. :
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Application for a Certificate Authorizing : **Docket No. 13-0252**
the Construction and Operation of a :
Carbon Dioxide Pipeline. :

PROPOSED ORDER

By the Commission:

I. INTRODUCTION AND PROCEDURAL HISTORY

On March 29, 2013, the FutureGen Industrial Alliance, Inc. ("Alliance" or "Applicant") filed an Application for Certificate Authorizing Construction and Operation of a Carbon Dioxide Pipeline ("Application"), pursuant to the Carbon Dioxide Transportation and Sequestration Act (220 ILCS 75/21 *et seq.*) (the "CO₂ Act") with the Illinois Commerce Commission ("Commission"). The CO₂ Act requires that a person or entity must possess a certificate of authority ("Certificate") from the Commission before it may construct, operate, or repair a carbon dioxide pipeline. The Alliance seeks a Certificate to operate approximately 28 miles of new 10-12 inch carbon dioxide pipeline ("CO₂ Pipeline") running from an oxy-combustion, coal-fueled power plant in Meredosia, Illinois to a deep geologic carbon dioxide storage facility in eastern Morgan County, Illinois. Applicant included a pipeline route map for the specific route for which it seeks approval. Applicant also seeks a limited grant of authority to take and acquire an easement in property or interest in property for the construction, maintenance, or operation of the CO₂ Pipeline in the manner provided for the exercise of the power of eminent domain under the Eminent Domain Act (735 ILCS 30/1-1-1 *et seq.*)

The Illinois Competitive Energy Association ("ICEA"), filed a Verified Petition to Intervene, which was granted by the Administrative Law Judge ("ALJ") on May 9, 2013. On May 22, 2013, the Alliance filed Supplemental Testimony. The Alliance filed a Motion for Entry of a Protective Order on May 22, 2013. The ALJ issued a Protective Ruling on July 23, 2013.

On July 31, 2013 the Alliance requested leave to file an amended application to accommodate route changes requested by affected landowners ("Amended Application"). The Alliance's request was granted on August 27, 2013 and the Amended application, including an amended pipeline route map and a list of landowners along the amended pipeline route was filed on September 11, 2013. Notice of the Application was published in the Jacksonville Journal Courier on April 4, 2013. The Alliance mailed notice of its Application and Amended Application to landowners along the proposed pipeline route on April 19 and August 28, 2013, respectively. The Alliance mailed notice of filing the Application and Amended Application with maps showing the

proposed pipeline route to local governments on April 24 and August 28, 2013, respectively.

An evidentiary hearing was held on September 24, 2013. The Alliance presented the direct testimony of Kenneth K. Humphreys, the Chief Executive Officer of the , Chris Burger, the Storage Project Manager for the Alliance. Staff presented the testimony of Eric Lounsberry, Supervisor of Gas Engineering in the Gas Engineering Program of the Safety and Reliability Division and Sheena Kight-Garlich, Senior Financial Analyst in the Financial Analysis Division.

The Alliance and Staff filed Initial and Reply Briefs on one contested issue. Staff filed a Motion to Strike portions of the Alliance's Initial Brief, which was granted in part and denied in part. Staff filed a Motion to Strike portions of the Alliance's Reply Brief which was denied. A Proposed Order was issued.

II. BACKGROUND

The Alliance describes itself as a Delaware non-stock, non-profit membership corporation with its administrative office located in Washington, D.C., and its FutureGen 2.0 Project office in Jacksonville, Illinois. It states that it has a charitable purpose recognized under section 501(c)(3) of the Internal Revenue Code and is authorized to do business in the State of Illinois. The Alliance states that its members are companies with substantial businesses in, or related to, the coal and electricity sectors. It lists the members as being Alpha Natural Resources, Anglo American plc, Joy Global, Inc., Peabody Energy and Xstrata Coal Pty Limited. The Alliance says it has no parent corporation and currently has no subsidiaries but that a subsidiary may be created to own the Power Plant component of the FutureGen 2.0 Project if necessary to facilitate the Power Plant's financing.

The Alliance states it was incorporated in 2005 expressly to support the FutureGen Initiative of the U.S. Department of Energy ("DOE"), which is a public-private initiative to create the world's first coal-fueled, near-zero emissions electric power plant. The Alliance describes the purpose of the public private initiative as being to support and fund development, construction, and operation of the FutureGen 2.0 Project. It states the public-private partnership is memorialized in two federal financial assistance agreements ("Cooperative Agreements") between the Alliance and the DOE. The Applicant explains that the Cooperative Agreements provide federal financial support for the FutureGen 2.0 Project: one for the CO₂ Pipeline and Storage Facility components and one for the Power Plant component. The Alliance asserts that the CO₂ Pipeline, which is the subject of this application, is an integral and essential part of the FutureGen 2.0 Project.

The Alliance states that the FutureGen 2.0 Project consists of three basic components: (i) an oxy-combustion coal-fueled electric power plant with carbon dioxide capture technology (the Power Plant); (ii) a CO₂ Pipeline that will transport carbon dioxide produced and captured by the Power Plant to the Storage Facility ("CO₂ Pipeline"); and (iii) the Storage Facility, where the carbon dioxide will be injected into a

deep geologic formation and permanently stored. It asserts that the Power Plant will be developed by substantially modifying the existing power plant infrastructure at the Meredosia Energy Center ("Meredosia Power Plant"), a power plant facility currently owned by Ameren Energy Resources Company ("Ameren"), to upgrade a portion of Meredosia Power Plant to a clean coal oxy-combustion electric generator with a 168 megawatt gross output. The Alliance states the Meredosia Power Plant will incorporate a front-end oxygen plant (also known as an air separation unit) and a back-end carbon dioxide compression and purification unit for the concentration and pressurization of carbon dioxide for delivery to the CO₂ Pipeline. It states the oxy-combustion boiler will combust a blend of coal, the majority of which will be produced by Illinois-based coal mines.

III. LEGAL REQUIREMENTS

The Alliance seeks an order granting it a Certificate and a limited grant of authority to take and acquire property under eminent domain pursuant to Section 20 of the CO₂ Act, which states in pertinent part as follows:

a) No person or entity may construct, operate, or repair a carbon dioxide pipeline unless the person or entity possesses a certificate of authority.

(b) The Commission, after a hearing, may grant an application for a certificate of authority authorizing the construction and operation of a carbon dioxide pipeline if it makes a specific written finding as to each of the following:

(1) the application was properly filed;

(2) the applicant is fit, willing, and able to construct and operate the pipeline in compliance with this Act and with Commission regulations and orders of the Commission or any applicable federal agencies;

(3) the applicant has entered into an agreement with a clean coal facility, a clean coal SNG facility, or any other source that will result in the reduction of carbon dioxide emissions from that source;

(4) the applicant has filed with the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation all forms required by that agency in advance of constructing a carbon dioxide pipeline;

(5) the applicant has filed with the U.S. Army Corps of Engineers all applications for permits required by that agency in advance of constructing a carbon dioxide pipeline;

(6) the applicant has entered into an agreement with the Illinois Department of Agriculture that governs the mitigation of agricultural impacts associated with the construction of the proposed pipeline;

(7) the applicant possesses the financial, managerial, legal, and technical qualifications necessary to construct and operate the proposed carbon dioxide pipeline; and

(8) the proposed pipeline is consistent with the public interest, public benefit, and legislative purpose as set forth in this Act. In addition to any other evidence the Commission may consider on this specific finding, the Commission shall consider the following:

(A) any evidence of the effect of the pipeline upon the economy, infrastructure, and public safety presented by local governmental units that will be affected by the proposed pipeline route;

(B) any evidence of the effect of the pipeline upon property values presented by property owners who will be affected by the proposed pipeline or facility, provided that the Commission need not hear evidence as to the actual valuation of property such as that as would be presented to and determined by the courts under the Eminent Domain Act;

(C) any evidence presented by the Department of Commerce and Economic Opportunity regarding the current and future local, State-wide, or regional economic effect, direct or indirect, of the proposed pipeline or facility including, but not limited to, ability of the State to attract economic growth, meet future energy requirements, and ensure compliance with environmental requirements and goals;

(D) any evidence addressing the factors described in items (1) through (8) of this subsection (b) or other relevant factors that is presented by any other State agency, the applicant, a party, or other entity that participates in the proceeding, including evidence presented by the Commission's staff; and

(E) any evidence presented by any State or federal governmental entity as to how the proposed pipeline will affect the security, stability, and reliability of energy.

In its written order, the Commission shall address all of the evidence presented, and if the order is contrary to any of the evidence, the Commission shall state the reasons for its determination with regard to that evidence.

(c) When an applicant files its application for a certificate of authority with the Commission, it shall provide notice to each local government where the proposed pipeline will be located and include a map of the proposed pipeline route. The applicant shall also publish notice in a newspaper of general circulation in each county where the proposed pipeline is located.

(d) An application for a certificate of authority filed pursuant to this Section shall request either that the Commission review and approve a specific route for a carbon dioxide pipeline, or that the Commission review and approve a project route width that identifies the areas in which the pipeline would be located, with such width ranging from the minimum width required for a pipeline right-of-way up to 200 feet in width. A map of the route or route width shall be included in the application. The purpose for allowing the option of review and approval of a project route width is to provide increased flexibility during the construction process to accommodate specific landowner requests, avoid environmentally sensitive areas, or address special environmental permitting requirements.

(e) The Commission's rules shall ensure that notice of an application for a certificate of authority is provided within 30 days after filing to the landowners along a proposed project route, or to the potentially affected landowners within a proposed project route width, using the notification procedures set forth in the Commission's rules. If the Commission grants approval of a project route width as opposed to a specific project route, then the applicant must, as it finalizes the actual pipeline alignment within the project route width, file its final list of affected landowners with the Commission at least 14 days in advance of beginning construction on any tract within the project route width and also provide the Commission with at least 14 days' notice before filing a complaint for eminent domain in the circuit court with regard to any tract within the project route width.

(f) The Commission shall make its determination on any application for a certificate of authority filed pursuant to this Section and issue its final order within 11 months after the date that the application is filed. The Commission's failure to act within this time period shall not be deemed an approval or denial of the application.

(g) A final order of the Commission granting a certificate of authority pursuant to this Act shall be conditioned upon the applicant obtaining all required permits or approvals from the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, U.S. Army Corps of Engineers, and Illinois Department of Agriculture, in addition to all other permits and approvals necessary for the construction and operation of the pipeline prior to the start of any construction. The final

order must specifically prohibit the start of any construction until all such permits and approvals have been obtained.

(h) Within 6 months after the Commission's entry of an order approving either a specific route or a project route width under this Section, the owner or operator of the carbon dioxide pipeline that receives that order may file supplemental applications for minor route deviations outside the approved project route width, allowing for additions or changes to the approved route to address environmental concerns encountered during construction or to accommodate landowner requests. The supplemental application shall specifically detail the environmental concerns or landowner requests prompting the route changes, including the names of any landowners or entities involved. Notice of a supplemental application shall be provided to any State agency or unit of local government that appeared in the original proceeding and to any landowner affected by the proposed route deviation at the time that supplemental application is filed. The route deviations shall be approved by the Commission no sooner than 90 days after all interested parties receive notice of the supplemental application, unless a written objection is filed to the supplemental application within 45 days after such notice is received. If a written objection is filed, then the Commission shall issue an order either granting or denying the route deviation within 90 days after the filing of the objection. Hearings on any such supplemental application shall be limited to the reasonableness of the specific variance proposed, and the issues of the public interest and benefit of the project or fitness of the applicant shall be considered only to the extent that the route deviation has raised new concerns with regard to those issues.

(i) A certificate of authority to construct and operate a carbon dioxide pipeline issued by the Commission shall contain and include all of the following:

(1) a grant of authority to construct and operate a carbon dioxide pipeline as requested in the application, subject to the laws of this State; and

(2) a limited grant of authority to take and acquire an easement in any property or interest in property for the construction, maintenance, or operation of a carbon dioxide pipeline in the manner provided for the exercise of the power of eminent domain under the Eminent Domain Act. The limited grant of authority shall be restricted to, and exercised solely for, the purpose of siting, rights-of-way, and easements appurtenant, including construction and maintenance. The applicant shall not exercise this power until it has used reasonable and good faith efforts to acquire the property or easement thereto. The applicant may thereafter use this power when the applicant determines that

the easement is necessary to avoid unreasonable delay or economic hardship to the progress of activities carried out pursuant to the certificate of authority.

IV. EVIDENCE

A. Certificate of Authority

1. Overview

The Alliance asserts that its proposed CO₂ Pipeline will consist of approximately 28 miles of 10-12 inch pipe, two meter stations, multiple mainline block valves, as well as sender and receiver stations for pigging. The Alliance states that the carbon dioxide that the CO₂ Pipeline deliveries to the Storage Facility will be injected and permanently stored in a deep saline aquifer, called the Mount Simon formation. The Alliance asserts that the construction and operation of the CO₂ Pipeline will meet the environmental impact and protection standards of the federal, state and local agencies that may have jurisdiction over environmental factors along the CO₂ Pipeline route. The Alliance acknowledges that it must comply with all safety requirements set forth in the United States Department of Transportation's Pipeline and Hazardous Materials Safety Administration's ("PHMSA's") regulations or be subject to civil penalties, compliance orders and/or having the CO₂ Pipeline shut down. Staff has concluded that the Alliance's Application was properly filed in accordance with the CO₂ Act.

2. Fit, Willing, and Able

The Alliance asserts that it is fit, willing and able to construct and operate the CO₂ Pipeline. The Alliance witness Humphreys asserts that the members of the Alliance are companies with substantial businesses in or related to the coal and electricity sectors. According to Mr. Humphreys, combined, these companies bring the highest level of technology, experience and resources to bear on the FutureGen 2.0 Project. He recounts that an award of \$1 billion in funding under the American Recovery and Reinvestment Act was given to the Alliance, Ameren, Babcock & Wilcox, and Air Liquide Process & Construction, Inc. to construct and operate the FutureGen 2.0 Project. He states that the active role and support of industry in the FutureGen 2.0 Project, combined with the committed support of the U.S. Government through the DOE, ensures that the public and private sector share the cost and risk of developing the FutureGen 2.0 Project. Staff states it believes that the Alliance is fit, willing, and able to construct and operate the CO₂ Pipeline in compliance with the CO₂ Act and with the orders and regulations of the Commission and applicable federal agencies

3. Clean Coal Facility Agreement

The Alliance asserts that it entered into a binding Asset Purchase Agreement that gives the Alliance the exclusive right to acquire from Ameren those portions of Meredosia Power Plant necessary to complete the FutureGen 2.0 Project. It states that pursuant to the Asset Purchase Agreement, the Alliance will own and operate all power

plant assets necessary for the integrated FutureGen 2.0 Project necessary to cause carbon dioxide captured at the plant to be transported via the CO₂ Pipeline and stored at the Storage Facility.

Staff notes that currently the Alliance plans to own and operate both the Meredosia Power Plant and the CO₂ Pipeline and concludes that it is not necessary for the Alliance to sign an agreement with itself to meet the requirement to have an agreement with a clean coal facility. Staff recommends that the Commission impose a condition in its Order that if, at some point in the future, the Alliance no longer owns both the Meredosia Power Plant and the CO₂ Pipeline, the Certificate of Authority shall cease to be in force and effect until such time as the owners of the Meredosia Power Plant and the CO₂ Pipeline execute an agreement that will result in the reduction of carbon dioxide emissions and in the transportation and sequestration of carbon dioxide emissions from the Meredosia Power Plant and file the same within 30 days of execution with the Commission.

4. PHMSA Filings

In regards to its compliance with the requirement that all forms required by PHMSA, the Alliance testifies that it will file all required pipeline safety information with PHMSA and with the Commission prior to the Commission issuing an order and prior to the commencement of construction. It states this includes registering as a CO₂ pipeline operator and providing electronic notice to PHMSA 60 days before beginning construction.

Staff opines that it is premature for the Alliance to request permission from PHMSA to construct the proposed CO₂ Pipeline until a date much closer to when the pipeline construction will take place. Staff asserts that the Alliance has contacted PHMSA and is aware of PHMSA's expectations with regard to the forms needed for this project. Staff concludes that the Alliance's lack of a PHMSA form at this time is not a basis for rejecting its request for a Certificate. It asserts that the Commission Order must include a requirement that the Alliance have all PHMSA forms prior to starting construction.

The Alliance asserts that beyond the initial notice, no PHMSA permits or authorizations are required to construct the CO₂ Pipeline. The Alliance maintains that the CO₂ Pipeline will be built and maintained in accordance with industry and governmental requirements and standards. In addition, the Alliance asserts that the actual installation of the CO₂ Pipeline will be subject to regulatory inspection, including by PHMSA inspectors.

5. Army Corps Filings

In addressing the requirement that all applications required by the Army Corps of Engineers ("Corps") in advance of constructing the pipeline, the Alliance asserts that it will file for all necessary permits and clearances with the Corps. The Alliance states that it intends to submit its Nationwide Permit 12 notification or Section 404 permit

application to the St. Louis Office of the Corps in 2013 after completing field reconnaissance surveys.

Staff notes that the Alliance has not yet filed permit applications with the Corps because necessary field surveys are ongoing. Staff relies upon the Alliance's affirmation that it has conducted preliminary meetings with agency officials and intends to file applications with the Corps in the future. From this Staff concludes that it is premature for the Alliance to have requested permission from the Corps to construct the proposed CO₂ Pipeline until necessary field surveys are completed. Staff states that the Alliance has contacted the Corps and is aware of its expectations with regard to the required permit. Staff asserts that the Alliance's lack of a Corps permit at this time is not a basis for rejecting its request for a Certificate. Staff concludes that the Commission Order must condition its order to include a requirement that the Alliance must have its Corps permit prior to starting construction.

6. Illinois Department of Agriculture Agreement

The Alliance states it entered into an Agricultural Impact Mitigation Agreement ("Mitigation Agreement") with the Illinois Department of Agriculture on January 20, 2012. The Alliance explains the Mitigation Agreement provides comprehensive procedures to deal with productivity, erosion, access and other issues of concern in agricultural areas. The Alliance avers that the CO₂ Pipeline will be buried at a depth consistent with the applicable provisions of the Mitigation Agreement. It provides a copy of the Mitigation Agreement as FutureGen Exhibit 5.

7. Qualifications of Applicant

a. Financial

The Alliance asserts that between federal funding from the DOE, the financial and staff support of its members, State of Illinois grant funding, and potential third party grants, the Alliance does not anticipate any need for third-party debt or equity investments in the CO₂ Pipeline and Storage Facility components of the FutureGen 2.0 Project. Therefore, it concludes that it possesses the financial qualifications necessary to construct and operate the proposed CO₂ Pipeline. Staff concurs, stating it believes that, through its agreements with DOE and the Power Purchase Agreements, the Alliance is capable of financing the construction, operation, and maintenance of the proposed CO₂ Pipeline. Staff indicates that it further believes that the Alliance has the cash on hand to cover the cost of construction of the proposed CO₂ Pipeline.

b. Managerial & Technical

The Alliance states that it possesses the managerial and technical qualifications necessary to construct and operate the proposed CO₂ Pipeline. It asserts that the CO₂ Pipeline will be constructed safely in a manner that poses no undue risk to construction workers or the public. The Alliance vows it will use only highly qualified and experienced contractors to do the actual construction, installation and operation of the

CO₂ Pipeline. Staff agrees that the Alliance meets the managerial and technical qualifications to construct the pipeline.

c. Legal

The Alliance presented evidence to show that it possesses the necessary legal qualifications to construct and operate the proposed CO₂ Pipeline. It asserts that it has employed legal counsel with experience in the certification of pipeline projects and rights-of-way. Staff states it is not aware of any information that would indicate that the Alliance does not meet the legal counsel qualifications.

8. Public Interest, Public Benefit, and Legislative Purpose

The Alliance asserts, and Staff agrees, that the CO₂ Pipeline is consistent with the public interest, public benefit, and legislative purpose. In support of this conclusion, both the Alliance and Staff rely upon the declaration of public interest and benefit in Section 5 of the CO₂ Act. They also rely upon the findings in Section 5 of the CO₂ Act that pipelines are necessary for sequestration or other carbon management purposes and critical to the use of Illinois coal:

...pipeline transportation is necessary for sequestration ... and thus is an essential component to compliance with ... plans to reduce carbon dioxide emissions from “clean coal” facilities and other sources. Carbon dioxide pipelines are critical to the promotion and use of Illinois coal and also advance economic development, environmental protection, and energy security in the State.

The Alliance explains that the CO₂ Pipeline is a key component for the FutureGen 2.0 Project. It states that by attempting to eliminate the emissions associated with a coal-fired plant, the FutureGen 2.0 Project seeks to prove the technology necessary to sustain coal as a viable fuel source. It reasons that this will better enable Illinois, with its significant coal resources, to meet its future energy requirements. Mr. Humphreys asserts that the anticipated economic effect of the FutureGen 2.0 Project in Illinois includes the creation of an estimated 700-1000 construction jobs and 700-1000 indirect jobs across Illinois. Staff concludes that job creation is a public benefit. The Alliance asserts that the effect of the CO₂ Pipeline on property values is expected to be minimal.

No evidence of the effect of the pipeline upon the economy, infrastructure, and public safety was presented by local governmental units that will be affected by the proposed CO₂ Pipeline route. No evidence of the effect of the CO₂ Pipeline upon property values was presented by property owners who will be affected by the proposed CO₂ Pipeline or facility. No evidence regarding the current and future local, State-wide, or regional economic effect, direct or indirect, of the proposed CO₂ Pipeline or facility was presented by the Department of Commerce and Economic Opportunity. No

evidence as to how the proposed CO₂ Pipeline will affect the security, stability, and reliability of energy was presented by any other State or federal governmental entity.

Other than the evidence described herein, no evidence addressing other relevant factors was presented.

B. Route

Alliance witness Burger testifies that the CO₂ Pipeline route will begin at the Meredosia Power Plant in western Morgan County, Illinois, and run eastward approximately 28 miles to the proposed Storage Facility in eastern Morgan County. A map of the Alliance's Revised Proposed Pipeline that was attached to Mr. Humphreys testimony is attached as Appendix A to this order. A list of the parcel index numbers ("PINs") of the properties for which it seeks a limited grant of authority to take and acquire easements was also attached to his testimony and is attached as Appendix B to this order. Mr. Humphreys states the initial three miles of the route heads due east from the power plant traversing cultivated land within the Illinois River floodplain and will cross under, by a horizontal directional drill, an engineered drainage ditch (known as Coon Run) with dikes on either side of it. Mr. Burger states that the pipeline will also be horizontally directional drilled under sensitive resources as it traverses the bluff area in the forested transition between the floodplain and the more elevated sections of eastern Morgan County. Mr. Burger says the pipeline route then heads southeasterly, utilizing the right-of-way for U.S. Highway 67 for approximately 2 miles. From there, he states, the route heads east with some variations to avoid populated areas and other sensitive resources. Mr. Burger asserts that the majority of the lands crossed by the route are under active cultivation.

Mr. Burger lists several key factors considered by the Alliance for siting. He states it sought to avoid residences by at least 150 feet. He asserts the Alliance also selected a route to avoid, as much as possible, sensitive environmental features such as, wetlands, streams and drainages, and habitats for state or federally protected biota. Mr. Burger says the Alliance sought to avoid disturbance to existing agricultural drainage tile systems and to avoid all known cultural resources such as cemeteries, historic sites, and Indian mounds. It further sought to avoid features that would increase construction costs such as road crossing and steep slopes. Finally, he states, the Alliance sought to maximize the use of existing rights-of-way along highways and power lines. He states that based on these factors, the Alliance selected the Morgan County site as the best location to store carbon dioxide produced at the nearby Meredosia.

The Alliance states it notified each local government where the proposed CO₂ Pipeline will be located. In addition, it states that it distributed an informational packet to all landowners of record of privately-owned tracts of land across which the Alliance expects to construct the CO₂ Pipeline describing the FutureGen 2.0 Project and the Alliance's land acquisition program.

Mr. Humphreys states that the Alliance provides the general public and the landowner stakeholder community with information describing the Alliance and the

FutureGen 2.0 Project in general. He states the Informational Brochure provides specifications regarding the engineering design and construction of the proposed CO₂ Pipeline. He asserts that, as described in the Informational Brochure, the Alliance seeks a permanent easement of 50 feet in width and temporary working space requirements, generally of 30 feet additional width.

In Staff's view, the route selected by the Alliance is in the public interest because it sought to avoid, as much as feasible, possibly sensitive environmental features, such as wetlands, streams and drainage, and habitats for state or federally protected biota; it attempted to avoid disturbance to existing agricultural drainage tile systems and to avoid all known cultural resources such as cemeteries, historic sites, and Indian mounds; and it sought to maximize the use of existing rights of ways along highways and power lines. Staff notes that the Alliance's amended application, which included changes requested by affected route modification is an indication that the Alliance is willing to work with the landowners to address their concerns. Staff finds this to be an important consideration in viewing whether the Alliance is negotiating in good faith with the landowners.

C. Contested Issue

The Alliance and Staff agree that the Commission may enter a final order in this proceeding prior to the Alliance obtaining all required permits. But the parties disagree as to how the Commission order should reflect the conditioning language in Section 20 of the CO₂ Act:

(g) A final order of the Commission granting a certificate of authority pursuant to this Act shall be conditioned upon the applicant obtaining all required permits or approvals from the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, U.S. Army Corps of Engineers, and Illinois Department of Agriculture, in addition to all other permits and approvals necessary for the construction and operation of the pipeline prior to the start of any construction. The final order must specifically prohibit the start of any construction until all such permits and approvals have been obtained.

The Alliance and Staff also disagree as to the consequence of the Final Order being conditioned on upon the Applicant obtaining all required permits. The Alliance takes the position that the conditioning language refers to the Final Order, while Staff takes the position that the conditioning language refers to the Certificate.

The Alliance asserts that the CO₂ Act contemplates that a Final Order, issued before an applicant obtains all required permits or approvals from other agencies, will contain a limited grant of eminent domain authority. The Alliance asserts that its proposal directly tracks the language in Section 20(g) of the CO₂ Act, whereas language nearly identical to that proposed by Staff was replaced by the General Assembly. The Alliance also points to the statutory requirement in Subsection 20(g) of the CO₂ Act, that the Final Order must specifically prohibit the start of any construction until all permits

and approvals have been obtained. The Alliance asserts that the subsection does not direct the Commission to specifically prohibit the exercise of eminent domain authority. The Alliance argues that because Subsection 20(g) of the CO₂ Act is limited to prohibiting construction activity only, it does not more broadly prohibit the effectiveness of the Final Order and the Certificate.

The Alliance relies upon the rule of statutory construction which it states is to ascertain and give effect to the true intent and meaning of the legislature. It also states that statutes should be construed to yield logical and meaningful results. The Alliance asserts that its proposed language closely tracks Section 20(g) of the CO₂ Act. The Alliance states that Staff's proposed language is not found in the CO₂ Act and is contrary to its legislative history. It argues that Staff's proposed language imposes conditions, through an overly expansive reading of an otherwise limited condition, that are not found in the CO₂ Act. The Alliance asserts that language nearly identical to that proposed by Staff was replaced by the General Assembly by the bill creating the CO₂ Act. Therefore it states that Staff's proposed language is contrary to the legislative history of the CO₂ Act. The Alliance states that the language proposed by Staff would make the Commission's decision little more than a commitment to finally decide the application for certification later, once all permits and approvals are obtained.

The Alliance references Subsection 20(i) of the CO₂ Act and asserts that it contemplates that the Commission's Final Order, issued before an applicant obtains all required permits or approvals will contain a limited grant of eminent domain authority. The Alliance also says its proposed language is consistent with how the Federal Energy Regulatory Commission ("FERC") handles permitting for interstate natural gas pipelines. It states the FERC conditions the start of construction on the receipt of all necessary permits, but does not condition the final issuance of a certificate of public convenience and necessity upon receipt of all permits. The Alliance asserts that the Final Order should grant a Certificate "conditioned upon the FutureGen Industrial Alliance, Inc. obtaining all required permits and approvals necessary for the construction and operation of the pipeline prior to the start of any construction."

The Alliance states it agrees with Staff that the taking of property is a very serious matter. In response to Staff's concern about the potential for premature use of eminent domain, the Alliance asserts it does not intend to initiate any condemnation proceedings, however, they may ultimately prove necessary and unavoidable. The Alliance states that the statutory prohibition on construction until after all permits and approvals have been obtained ensures that it cannot make physical changes to affected landowners property until it obtains all needed permits. The Alliance argues that Staff's position is unworkable because it would preclude it from beginning the condemnation process until after the last permit was finalized. It states that delays in right-of-way acquisition and consequent delays in construction would jeopardize its ability to meet the statutory deadline to expend funds awarded by DOE. It emphasizes that its proposal merely allows it to begin the condemnation process if its good-faith efforts at negotiation are rejected. The Alliance argues, moreover, that Staff's approach ignores the fact that some of the permits and approvals require it to identify a final route. It argues that without the ability to initiate condemnation proceedings it may not be able to

represent to other agencies that the route is truly final in time to meet the project's schedule. The Alliance also states it would be seeking easements not fee interests. It states if it acquired the easements and then discovered it could not get the required permits, then construction of the pipeline would not occur.

Staff asserts that the statute provides that the Commission is to issue a Certificate under the CO₂ Act effective only after all the conditions set by the General Assembly have been met. Staff states that whether the legislature's intent in the CO₂ Act can be determined from the plain language of the statute is a threshold issue. Staff states that the plain meaning of the CO₂ Act is clear, thus the Commission may not consider its legislative history. Staff states that obtaining all required permits or approvals is a condition precedent to any Certificate having force or effect. According to Staff, the Alliance's interpretation is unreasonable, as it would allow any applicant to obtain a certificate of authority from the Commission after merely applying for it despite not having met all the requirements, including all required permits and approvals, to obtain the Certificate. Staff concludes that its interpretation is the only reasonable interpretation of the CO₂ Act. Staff argues the Alliance's interpretation presumes, for example, permits and approvals that may not be forthcoming. Staff explains that the Alliance offered evidence that it needs to obtain no fewer than twelve permits, of which it has one in hand. Staff asserts that the result of the Alliance's interpretation is absurd and illogical, and thus, the Alliance's statutory interpretation should be avoided. Staff states that PHMSA, the Corps, the DOA or any other of the other entities authorized by law to issue Applicant a permit or approval might delay granting it or withhold it altogether, based on the Alliance's showing to that entity.

Staff asserts that the Applicant should not be able to exercise authority pursuant to the Certificate until such time as it successfully meets all the conditions imposed by the General Assembly. Staff opines that an Applicant should not have a limited grant of authority to take and acquire an easement in the exercise of the power of eminent domain before the Certificate is actually granted. Staff references past proceedings, where the Commission has expressed strong views regarding the exercise of condemnation authority based on Commission-granted eminent domain. Staff recommends the Commission find the Alliance may be granted a Certificate of authority after the statutory conditions (and other Staff and Alliance agreed conditions and requirements) have been met, but not before.

Staff argues its interpretation of the statute is not "unworkable" merely because the Alliance is prevented from prematurely exercising eminent domain authority. In Staff's view, the Alliance's interpretation is unworkable and contrary to the constitutional property right protections granted to Illinois landowners. Staff disagrees with Alliance's argument that because it would make no physical changes to affected landowners' property without first obtaining all needed permits, the use of eminent domain authority would advance the project while protecting landowner rights. Staff asserts that if the Alliance has exercised eminent domain authority, the landowners' property rights will have been impeded upon, no matter when or if the Alliance begins construction. Staff is also unpersuaded by the Alliance's argument that its interpretation merely allows it to begin condemnation proceedings. Staff states that the argument somehow implies that

merely beginning the process of condemning property is not intrusive on property owners' rights. Staff asserts that this is not the case.

Staff states its interpretation should not be found to be impractical merely because of the Alliance's project funding issues. According to Staff, allowing the Alliance's singular financial situation to affect the interpretation of the CO₂ Act requirements would be the practical equivalent to special legislation, which is prohibited in Illinois, citing IL Const. Art. 4, Sec. 13. ("The General Assembly shall pass no special or local law when a general law is or can be made applicable.") Staff states that FERC procedures are irrelevant to how the CO₂ Act requires the Commission to handle the granting of a Certificate.

Staff asserts that the legislation contemplates the issuance of a Final Order before all required permits and approvals are obtained, but that the Certificate will not be effective until all required permits and approvals have been obtained. Staff relies upon Subsection 20(g) of the CO₂ Act, which states that the granting of the Certificate shall be conditioned upon the applicant obtaining all required permits or approvals. Staff also points to the requirement in Subsection 20(b)(7) of the CO₂ Act, that the Commission must find that the Applicant possesses the financial, managerial, legal, and technical qualifications necessary to construct and operate the pipeline. Staff asserts that the Applicant cannot have the legal qualifications to construct and operate the pipeline until it has the required permits and approvals. Staff argues that the Alliance's interpretation is unreasonable as it would allow any applicant to obtain a Certificate after merely applying for it despite not having met all the requirements, including all required permits and approvals to obtain the Certificate. Staff states the interpretation would make the certificate of authority and the entire CO₂ Act meaningless.

V. COMMISSION ANALYSIS AND CONCLUSIONS

The Commission concludes that Alliance's Application was properly filed in accordance with the CO₂ Act. The evidence shows the Alliance is fit, willing, and able to construct and operate the CO₂ Pipeline in compliance with the CO₂ Act and with the orders and regulations of the Commission and applicable federal agencies. The Commission concludes that the record shows that the Alliance is fully aware of the governmental approvals necessary for construction and operation of the proposed CO₂ Pipeline in Illinois and of regulatory and legal requirements pertaining to construction and operation of the proposed pipeline, and is prepared to meet those requirements.

The Commission concurs with the Applicant and Staff that it is premature for the Alliance to request permission from PHMSA to construct the proposed CO₂ Pipeline until a date closer to when the pipeline construction will take place. The Commission finds that the Alliance has contacted PHMSA and is aware of PHMSA's expectations with regard to the forms needed for this project; and that the fact that the Alliance has not yet filed all necessary forms with PHMSA at this time is not a basis for rejecting its request for a Certificate. The Commission finds that all forms required by PHMSA shall be filed by the Alliance prior to commencing construction of the CO₂ Pipeline. Similarly, the Commission concludes that it is premature for the Alliance to have requested

permission from the Corps to construct the proposed CO₂ Pipeline until necessary field surveys are completed. The Commission finds the Alliance has contacted the Corps and is aware of its expectations with regard to the required permit. The Commission finds that the Alliance's lack of a Corps permit at this time is not a basis for rejecting its request for a Certificate. The Commission finds that the Alliance shall procure the necessary permits from the Corps prior to commencing construction of the CO₂ Pipeline.

The Commission finds that the Alliance owns and operates, or will own and operate, or otherwise contract for, all power plant assets necessary for the integrated FutureGen 2.0 Project and necessary to cause carbon dioxide captured at the Meredosia Power Plant to be transported and stored.

The Commission concludes that the Alliance has the financial, managerial, legal, and technical qualifications necessary to construct and operate the CO₂ Pipeline. In addition, the Commission finds that the proposed CO₂ Pipeline is consistent with the public interest, public benefit, and legislative purpose as set forth in the CO₂ Act.

The Commission has read the parties' extensive arguments regarding the effect of the conditioning language in Subsection 20(g) of the CO₂ Act. The arguments focus on the language to be used in the grant of the Certificate, the essence of the dispute is whether the limited grant of eminent domain authority granted with the Certificate may be used prior to the Applicant receiving all required permits and approvals. The Alliance argues that the legislature intended for the grant of eminent domain authority to be effective immediately. Staff argues that the Applicant must be in receipt of all required permits and approvals prior to commencing eminent domain proceedings.

The concerns of both the Alliance and Staff are valid. The Alliance is concerned with the length of time involved in the condemnation process and its ability to expend funds awarded by DOE within the statutory deadline. Staff correctly notes the serious nature of a grant of eminent domain authority and the consequent impediment to landowners' property rights. The Alliance and Staff focus on Subsection 20(g) of the CO₂ Act, which states that the Final Order granting the Certificate must be conditioned on the Applicant obtaining all required permits. The Applicant argues that it is the Final Order, not the Certificate that is conditioned on the receipt of all required permits. This argument infers that there is a Certificate in the absence of a Final Order. The Commission finds this argument unpersuasive. If the Final Order granting a Certificate has no effect, then there can be no Certificate. To the extent that a Final Order is conditioned upon the receipt of all required permits and approvals, then the Certificate approved in the Final Order is also conditioned upon the receipt of all required permits and approvals. Subsection 20(i) of the CO₂ Act requires eminent domain authority to be granted with a Certificate. The grant of eminent domain authority is tied to the grant of a Certificate. Thus, the grant of eminent domain authority is also limited by the conditioning language of Subsection 20(g).

The Alliance argument that because Subsection 20(g) of the CO₂ Act is limited to prohibiting construction activity only, it does not more broadly prohibit the effectiveness

of the Final Order and the Certificate ignores the conditioning language in the preceding sentence, which states: "A final order of the Commission granting a certificate of authority pursuant to this Act shall be conditioned upon the applicant obtaining all required permits or approvals" If the General Assembly intended that only the actual construction of the pipeline should be conditioned upon the applicant receiving all required permits and approvals, then it would have stated that rather than explicitly conditioning the Final Order, itself, upon receipt of all permits. The Alliance's interpretation is not consistent with the plain language of the statute.

The Alliance also expresses concern regarding its inability to identify a final route, as required by other agencies, because the Certificate is conditioned on permits. The Commission believes other agencies would find that this Final Order, approving the proposed route, to be sufficient evidence of the Applicant having identified a final route. The Commission notes the Alliance's concern about its ability to meet statutory deadlines to expend funds awarded by DOE. As noted above, the Commission has found that the Alliance has the financial, managerial, legal, and technical qualifications necessary to construct and operate the CO₂ Pipeline. The Commission is also confident that the Alliance has the ability to meet the DOE deadlines. The Commission does not find the distinction made by the Alliance between the taking of an easement rather than a fee simple interest to be meaningful. Both situations involve a taking of real property. Similarly, it is immaterial that the construction of the pipeline would not occur if the required permits are not acquired; in either event, the property owner would be deprived of his or her property rights.

The Commission finds that this Final Order is conditioned upon the Alliance obtaining all required permits and approvals. As a result, the Commission finds that the Certificate and the limited grant of eminent domain authority contained within the Certificate are also conditioned upon the Alliance obtaining all required permits and approvals. The grant of limited eminent domain authority may not be exercised until the Alliance has obtained all required permits and approvals.

The Commission approves the route proposed by the Alliance as depicted on Appendix A, across the land identified in Appendix B. The route selected by the Alliance is in the public interest. With regard to easements, the Alliance indicates generally, it will need 50-foot easements to construct and operate the CO₂ Pipeline. Therefore, the Commission authorizes the Alliance to acquire up to and including 50-foot wide easements. The Alliance is also authorized to acquire construction easements, as necessary, of up to and including 30 feet in width, in addition to the permanent easements, to construct the proposed CO₂ Pipeline.

The Commission finds the CO₂ Pipeline as approved herein complies with the requirements of Section 20 of the CO₂ Act. The route proposed by the Alliance is in the public interest and is approved. The Commission's Final Order granting the Certificate is conditioned upon the Alliance receiving all required permits and approvals from PHMSA, the Corps, and the Illinois Department of Agriculture, in addition to all other permits and approvals necessary for the construction and operation of the pipeline prior

to the start of any construction. The start of any construction is specifically prohibited until all such permits and approvals have been obtained.

Therefore, the Commission notes that the Alliance must obtain and file with the Commission, with a copy to the Manager of the Energy Engineering Program in the Safety and Reliability Division, an electronic or hard copy of each of the following requisite permits and approvals.

- (1) Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation ("PHMSA"), filing of written notification to PHMSA Administrator of intention to commence transportation of carbon dioxide by pipeline, 49 C.F.R. 195.8, Operator Registry Notification, PHMSA Form 1000.2, 49 C.F.R. 195.64, and Integrity Management Program, 49 C.F.R. 195.452.
- (2) United States Army Corps of Engineers, permit to discharge dredged or fill materials into navigable waters of the United States, 33 U.S.C. § 1344.
- (3) United States Army Corps of Engineers, permission to construct under a federally listed dike, 33 U.S.C. § 408.
- (4) Illinois Department of Natural Resources, permit for construction in floodways of rivers, lakes and streams, 615 ILCS 5/18.
- (5) Illinois Department of Natural Resources ("IDNR"), approval of conservation plan if required by IDNR, 17 Ill. Admin. Code Part 1080.
- (6) United States Fish and Wildlife Service of the United States Department of the Interior ("USFWS"), consultation under 16 U.S.C. § 1536(a)(2) and concurrence by USFWS that the proposed pipeline is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction of or adverse modification of critical habitat of any such species.
- (7) Illinois Department of Transportation, permit to locate utility on state highway right-of-way, 605 ILCS 5/9-113, 92 Ill. Admin. Code 530.40.
- (8) Morgan County Road Commissioners, Districts 1, 3, and 5, written consent to construct under township or district road, 605 ILCS 5/9-113.

At this time the Alliance either owns or will own and operate all power plant assets necessary for the FutureGen 2.0 Project and necessary to cause carbon dioxide captured at the Meredosia Power Plant to be transported and stored. If at some point in the future, the Alliance no longer owns both the Meredosia Power Plant and the CO₂ Pipeline, then the Certificate will be null and void unless the new owners of the Meredosia Power Plant and/or CO₂ Pipeline ("new owners") enter into an agreement as provided for in Subsection 20(b)(3) of the CO₂ Act. The new owners shall file a copy of the agreement with the Commission and provide a copy to the Manager of the Energy Engineering Program in the Safety and Reliability Division, within 20 days of the Alliance no longer owning both the power plant and carbon dioxide pipeline.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record, is of the opinion and finds that:

- (1) FutureGen Industrial Alliance, Inc. properly filed its Application for a Certificate authorizing it to construct and operate a CO₂ Pipeline pursuant to Section 20 of the CO₂ Act;
- (2) the Commission has jurisdiction over FutureGen Industrial Alliance, Inc. and the subject matter herein;
- (3) the recitals of fact and legal argument identified as the parties' respective positions are supported by the record;
- (4) the facts recited and conclusions of law reached in the Commission Analysis and Conclusion are supported by the record and are hereby adopted as findings herein;
- (5) the FutureGen Industrial Alliance, Inc. is fit, willing, and able to construct and operate the CO₂ Pipeline in compliance with the CO₂ Act and with the orders and regulations of the Commission and applicable federal agencies;
- (6) the FutureGen Industrial Alliance, Inc. has entered or will enter into an agreement with a clean coal facility;
- (7) prior to commencing construction, the FutureGen Industrial Alliance, Inc. should file all materials required by the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration and file a copy with the Commission with a copy to the Manager of the Energy Engineering Program in the Safety and Reliability Division;
- (8) prior to commencing construction, the FutureGen Industrial Alliance, Inc. should file all materials required by the U.S. Army Corps of Engineers and should file a copy with the Commission and a copy to the Manager of the Energy Engineering Program in the Safety and Reliability Division;
- (9) the FutureGen Industrial Alliance, Inc. has entered into an Agriculture Mitigation Agreement with the Illinois Department of Agriculture, dated January 20, 2012, which mitigates the agricultural impacts associated with the construction of the proposed CO₂ Pipeline;
- (10) the FutureGen Industrial Alliance, Inc. has the financial, managerial, legal, and technical qualifications necessary to construct and operate the CO₂ Pipeline;

- (11) the CO₂ Pipeline as approved herein, is consistent with the public interest, public benefit, and legislative purpose as set forth in the CO₂ Act;
- (12) the easements for the CO₂ Pipeline as approved herein, are reasonable and appropriate and should be approved;
- (13) pursuant to Section 20 of CO₂ Act, the FutureGen Industrial Alliance, Inc. should be granted a Certificate of Authority, authorizing it to construct and operate a CO₂ Pipeline as described herein;
- (14) pursuant to Section 20 of the CO₂ Act, the Certificate of Authority should include a limited grant of eminent domain authority under the Eminent Domain Act;
- (15) pursuant to Section 20 of the CO₂ Act, the Certificate of Authority should be conditioned upon the FutureGen Industrial Alliance, Inc. obtaining all required permits and approvals;
- (16) pursuant to Section 20 of the CO₂ Act, the FutureGen Industrial Alliance, Inc. should be prohibited from the start of any construction until all required permits and approvals have been obtained;
- (17) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED that the FutureGen Industrial Alliance, Inc. is hereby granted a Certificate of Authority pursuant to Section 20(b) of the CO₂ Act to construct and operate approximately 28 miles of new 10-12 inch carbon dioxide pipeline running from an oxy-combustion, coal-fueled power plant in Meredosia, Illinois to a deep geologic carbon dioxide facility in eastern Morgan County, Illinois.

IT IS FURTHER ORDERED that this Final Order and the Certificate of Authority granted herein is conditioned upon the FutureGen Industrial Alliance, Inc. obtaining all required permits and approvals necessary for the construction and operation of the pipeline.

IT IS FURTHER ORDERED and that said Certificate of Authority shall be the following:

CERTIFICATE OF AUTHORITY

IT IS HEREBY CERTIFIED that the FutureGen Industrial Alliance, Inc. is authorized to construct and operate approximately 28 miles of new 10-12 inch carbon dioxide pipeline running from an oxy-combustion, coal-fueled power plant in Meredosia, Illinois to a deep geologic carbon dioxide facility in eastern Morgan County, Illinois, as requested in its Amended Application, subject to the laws of this State.

This Certificate of Authority includes a limited grant of eminent domain authority, under the Eminent Domain Act, to take and acquire an easement in any property or interest in property for the construction, maintenance, or operation of the approved carbon dioxide pipeline.

This Certificate of Authority is conditioned upon the FutureGen Industrial Alliance, Inc. obtaining all required permits or approvals from the Pipeline and Hazardous Materials Safety Administration of the U.S. Department of Transportation, U.S. Army Corps of Engineers, and Illinois Department of Agriculture, in addition to all other permits and approvals necessary for the construction and operation of the pipeline prior to the start of any construction.

IT IS FURTHER ORDERED that the FutureGen Industrial Alliance, Inc. shall file a copy of all filings for required permits and approvals with the Commission and a copy to the Manager of the Energy Engineering Program in the Safety and Reliability Division.

IT IS FURTHER ORDERED that the start of any construction is prohibited until all such permits and approvals have been obtained.

IT IS FURTHER ORDERED that the CO₂ Pipeline route proposed by FutureGen Industrial Alliance, Inc., as depicted on Appendix A is hereby approved; the FutureGen Industrial Alliance, Inc. is authorized to construct and operate the CO₂ Pipeline on, over, along, across, and through the parcels of land identified in Appendix B.

IT IS FURTHER ORDERED, the FutureGen Industrial Alliance, Inc. is authorized to acquire up to and including 50-foot wide permanent easements and also authorized to acquire construction easements, as necessary, of up to and including 30 feet in width, to construct the proposed CO₂ Pipeline.

IT IS FURTHER ORDERED that the Certificate of Authority granted to the FutureGen Industrial Alliance, Inc. contains and includes a limited grant of authority to take and acquire an easement in any property or interest in property for the construction, maintenance, or operation of a carbon dioxide pipeline in the manner provided for the exercise of the power of eminent domain under the Eminent Domain Act.

IT IS FURTHER ORDERED that this limited grant of eminent domain authority shall be restricted to, and exercised solely for, the purpose of siting, rights-of-way, and easements appurtenant, including construction and maintenance along the route approved by the Commission herein.

IT IS FURTHER ORDERED that the FutureGen Industrial Alliance, Inc. shall not exercise this eminent domain power until it has used reasonable and good faith efforts to acquire the property or easement.

IT IS FURTHER ORDERED that the FutureGen Industrial Alliance, Inc. may thereafter use this eminent domain power when the applicant determines that the easement is necessary to avoid unreasonable delay or economic hardship to the progress of activities carried out pursuant to the certificate of authority.

IT IS FURTHER ORDERED that if at any time the FutureGen Alliance no longer owns both the power plant and the CO₂ Pipeline then this Certificate of Authority shall cease to be in force and effective until such time as the owners of the power plant and the owners of the pipeline execute an agreement that will result in the reduction of carbon dioxide emissions from the power plant and file the same with the Commission.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: January 3, 2014

Jan Von Qualen
Administrative Law Judge

Briefs on Exceptions must be received by January 16, 2014.

Briefs in Reply to Exceptions must be received by January 24, 2014.